

In re ) Fair Hearing No. 10,205  
 )  
Appeal of )

The petitioner appeals the Department's decision to reduce her ANFC, Food Stamps and Fuel assistance grants due to income earned by her minor daughter.

1. The petitioner is an ANFC recipient who reported to the Department in late November, 1990, that her 16-year-old daughter had taken a full-time job as a store clerk and would be paid \$4.00 per hour for a 25 hour work week. The petitioner's daughter was apparently not enrolled in school.

The worker does not recall the conversation. In fact, she did not recall ever having met the petitioner as she is new with the Department.

3. On December 25, 1990,<sup>1</sup> the Department prepared a notice to the petitioner which was mailed December 27, 1990, advising her that her ANFC grant was decreased effective January 15, 1991 from \$806.00 to \$513.00, that her Food Stamp

allotment benefit would decrease from \$266.00 to \$167.00 on February 1, 1991, and that her fuel grant would decrease from \$105.00 to \$90.00 on July 1, 1991, based on her daughter's reported gross income of \$560.00 for November of 1990.

4. The petitioner's daughter was laid-off in December of 1990 and no longer works.

5. Subsequently, the petitioner presented proof that her daughter had actually earned only \$451.00 and on January 3, 1991, the petitioner was notified that her ANFC grant would increase from \$513.00 to \$585.00 her Food Stamps from \$167.00 to \$184.00, and her fuel assistance from \$90.00 to \$95.00 based on the change.

6. The petitioner does not dispute the accuracy of the amounts used in calculations made by the Department with regard to her various benefits. She contends, instead, that the Department misled her with regard to the effect of her daughter's income on her benefits. Based on that information, she states that her daughter only paid her \$10.00 per week for room and board and that the rest of the family, including three other children, suffered from the decrease in benefits.

ORDER

The Department's decision is affirmed.

REASONS

The ANFC, Food Stamp and Fuel assistance programs generally require the inclusion of all earned income received by the assistance group (for ANFC) or household (for Food Stamps and Fuel assistance) unless the income is specifically excluded by another regulation. W.A.M. § 2250, F.S.M. § 279.9(b)(1), W.A.M. § 2904.2 Each of those programs provides exclusions for the income of minor children as follows:

1. ANFC:

Other Excluded Income

. . .

Earned income of an eligible child if the child is a full-time student. Earned income of an eligible child if the child is a part-time student, but not employed full time. A student is a person who is enrolled in a school, college, university, or a course of vocational or technical training designed to fit him or her for gainful employment.

The school or institution shall make the determination of the student's status as full-time or part-time (i.e. less than full-time). A full-time employee is one who is employed 100 or more hours per month.

When comparing gross earned income with 185 percent of the need standard to determine eligibility, this exclusion applies only to full-time students and for a period not to exceed 6 months in any given calendar year. [Retroactive to June 1, 1984]

W.A.M. § 2255.1

2. Food Stamps:

Only the following items shall be excluded from household income and no other income shall be excluded.

. . .

The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least half time, and who have not attained their 18th birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation break, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

F.S.M. § 273.9(c)

3. Fuel Assistance:

Income shall not include the following:

. . .

Earned income of a child under age 18 who is attending school at least half time and living with a parent or living with relatives in unemancipated minor status as a member of their household.

W.A.M. § 2904.3

The petitioner has not presented any evidence and, indeed, does not argue that her daughter is a student. Therefore, the Department properly included the daughter's entire income in its calculations for all three programs. The petitioner maintains, however, that the Department should not be allowed to reduce her benefits because they had given her the wrong information about the effect of working on her benefits.

The Board has held that in order to prevent the Department from enforcing its regulations in an allegedly

unjust situation ("equitable estoppel"), the petitioner must show five elements:

1. That the Department knew the facts;
2. That the Department intended that the information they gave out should be acted on or that she had a right to believe that the Department so intended;
3. That the petitioner did not know the true facts;
4. That the petitioner relied on that information to her detriment, and;
5. That without this estoppel an injustice of significant dimension would occur so as to justify the Department's failure to carry out its rules.

See Fair Hearing No. 9273

It is not clear what information the Department actually had, what information it may have given the petitioner, or if the petitioner reasonably acted on that information in this matter. However, it is clear that the petitioner and her family were put in no worse condition by her daughter's working. The family's total benefits were decreased by \$313.00 while its gross income was increased by \$451.00. Even after taxes, the family's total income was most likely equal to or greater than the total benefits lost. It cannot be found, therefore, that the petitioner suffered a detriment or that a significant injustice would result to her so as to justify suspension of the applicable regulations. The Department's decision is affirmed as consistent with its regulations. 3 V.S.A. § 3091(d)

FOOTNOTES

<sup>1</sup>Apparently the Department's computers which prepare the notices do not have holiday on Christmas Day.

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